

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RAKESK DEWAYNE WHITE,

Petitioner,

Case No. 2:18-cv-11582

v.

HON. AVERN COHN

TOM WINN,

Respondent.

MEMORANDUM AND ORDER
DISMISSING CLAIMS THREE AND FOUR WITHOUT PREJUDICE
AND
DIRECTING THE CLERK TO SERVE THE PETITION ON THE STATE,
AND
DIRECTING THE STATE TO FILE A RESPONSE TO PETITIONER'S FIRST AND
SECOND CLAIMS

I.

This is a habeas corpus case under 28 U.S.C. § 2254. Petitioner Rakesk Dewayne White challenges his convictions of two counts of first-degree murder, Mich. Comp. Laws § 750.316(1)(a), three counts of assault with intent to commit murder, Mich. Comp. Laws § 750.83, one count of possession of a firearm by a felon, Mich. Comp. Laws § 750.224f, and one count of possession of a firearm during the commission of a felony, Mich. Comp. Laws § 750.227b.

Petitioner claims that his trial and appellate attorneys violated his constitutional right to effective assistance of counsel. Specifically, Petitioner says that (1) trial counsel

failed to subpoena Investigator Gerald Borycz for trial, (2) trial counsel failed to impeach prosecution witness Eric Bowler regarding his interaction with Investigator Borycz, (3) trial counsel failed to interview and subpoena prosecution witness Terrloyn Parham for trial, and (4) appellate counsel failed to file Petitioner's pro se brief, as promised.

Petitioner admitted in his petition that he did not raise his third claim on direct appeal from his convictions, and it appeared to the Court that Petitioner may not have raised his fourth claim on appeal, at least not in the Michigan Court of Appeals. Accordingly, the Court ordered Petitioner to inform the Court how he wanted to proceed with his "mixed" petition of exhausted and unexhausted claims. The Court noted that it could deny the petition on the merits, stay the petition, dismiss the petition without prejudice, or dismiss the unexhausted claims and proceed with the exhausted claims. See Doc. 6.

In a letter dated August 24, 2018 and filed on September 11, 2018, Petitioner informed the Court that he wishes to have the Court dismiss his unexhausted claims and proceed with his exhausted claims. See Doc. 7.

II.

Accordingly, Petitioner's third and fourth claims are DISMISSED WITHOUT PREJUDICE.

The Clerk of Court shall mail a copy of this order and a copy of the habeas petition to warden Thomas Winn and to the Michigan Attorney General.

The State shall file a response to Petitioner's first and second claims, along with the relevant portions of the state-court record, within six (6) months of the date of this

order. Petitioner shall have forty-five (45) days from the date of the State's response to file a reply.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: 10/16/2018